

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5805 of 1986

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

GIRISH B PANDYA

Versus

TOWN PLANNING OFFICER

Appearance:

MR DHIRENDRA MEHTA FOR MR PV HATHI for Petitioner
M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 20/03/96

ORAL JUDGMENT

1. This Special Civil Application was filed on 14-8-86 against the apprehended termination from the service by the respondent. The petitioner had come with the case that he had been working in the office of the respondent since June 1984 on daily wages basis and was discharging the duties against the vacant post of Peon. It has also been stated that though he was termed as a Daily Wager he was not doing the work of survey. It has been further stated that in May, 1986 a longer artificial break was given and, thereafter, he was again called upon to discharge the same duties from 1-6-86. It has been also stated that the post of Peon was vacant in the office of respondent and a requisition for filling up the post of Peon had also been made to the Collector, Rajkot who has to allot persons eligible for appointment to such posts, but the respondent did not pursue this requisition. It has been further stated that the respondent could have given appointment order to the petitioner on the vacant post of Peon where the petitioner was discharging duties, but the same was not done even though the posts of peon were vacant and available for being filled in by persons like the petitioner, who was duly registered with the Employment Exchange and who had been working as such continuously from June 1984. The petitioner has then stated that it is not permissible for the respondent to terminate the services of work charge employees like the petitioner, who had worked for more than 280 days and that he was entitled to get the status of a regular employee and his services could not be terminated except as provided by the provisions of Industrial Disputes Act. On that basis the petitioner claimed that he may be declared to be a regular employee entitled to continue in service and to be absorbed as a permanent employee in the cadre of Peon, that his services could not be terminated on the ground that he had been appointed on daily wages and further that the respondent be restrained from terminating his services and from giving any artificial break in the service. On 4-12-86 the notice was issued and ad interim relief in terms of para 9(D) of the petition was granted.

Rule was then issued on 21-4-87 and ad interim relief was continued till further orders. This is how the petitioner has been continuing in service and the ad interim order passed by this court has also continued to be operative since 4-12-86 i.e. for a period of more than nine years by now.

2. The Petitioner's claim has been seriously disputed in the reply affidavit dated 24-3-87 and it has been categorically stated in the reply that the petitioner had been appointed on daily wages basis for the purpose of survey. A statement has also been enclosed showing the actual number of days on which he had worked for the period from June 1984 onwards. It has been also stated that the petitioner had never been appointed on all working days and had been engaged on the days on which the survey was being done or when his services were actually required. It has also been categorically stated that while engaging the petitioner no procedure was followed nor he was engaged or appointed according to any Rules and that the petitioner does not fulfill the requisite qualification of age and he had crossed the maximum age prescribed for appointment of Peon in Secretariat Recruitment Rules, 1982, he did not qualify for being appointed as a peon and he had never been engaged by following procedure under the Rules and he can not be absorbed as a permanent employee under that office. It has also been stated that the Town Planning Office had been established for completion of Town Planning Scheme and to perform functions according to the provisions of Gujarat Town Planning and Urban Development Act, 1976 for a temporary period. In this reply affidavit dated 24-3-87 it has also been stated that the office had been established under Government Resolution dated 5-4-82 and its duration was extended from time to time. The last date up to which the duration was extended was 28-2-87 as per this affidavit dated 24-3-87. It has also been stated that the petitioner's name had never been recommended by the Employment Exchange and mere enrolment with the Employment Exchange does not create any entitlement. Merely because at one time petitioner's wages for three months were paid by a single bill, he can not be said to be in regular employment and that there were only two sanctioned posts of Peon, which had been duly filled in since September, 1983. The allegation of sending requisition to the Collector has also been categorically denied and it has also been denied that the office of the respondent was a work charge establishment. It has also been stated that the petitioner had never been appointed as a work charge employee. It has been further stated that the office of

the respondent was not an industry and even if it is held to be an industry, the petitioner has an alternative remedy before the Industrial Tribunal. To this reply dated 24-3-87, the affidavit-in-rejoinder dated 2-4-87 and a further affidavit in support of the petition dated 27-3-95 had been filed.

3. The pleadings of the parties make it clear that there are several disputed questions of fact with regard to the status as well as the period of working of the petitioner and with regard to the claim as to whether he was working for the purpose of survey or as a Peon. It ofcourse appears that the office of the respondent has continued even beyond 1987 and the office is still continuing as the Department takes up different Town Planning Schemes from time to time and in the Rejoinder-affidavit dated 2-4-87 it was stated that the term of the office had been extended upto 29-2-88 and even today the learned counsel for the petitioner has stated that the respondent's office is still continuing.

4. I have heard both the sides and have also noted that there are serious disputed questions of fact, which can not be gone into in this proceedings under Article 226 of the Constitution of India. There is no question of declaring the petitioner to be a regular employee when he has not faced the process of regular recruitment at any point of time and the petitioner will have to undergo the process of regular recruitment in accordance with the Rules as and when the regular recruitment is held by the respondent, but in view of the fact that the petitioner was within the age limit at the time of his initial appointment in 1984, the question of crossing the upper age limit will not come in his way and the petitioner can not be deprived of his right of consideration and to compete for the regular appointment as and when the recruitment is held. This petition has remained pending since 1986 in this Court and the Rule was issued in the year 1987 and, therefore, at this stage it will also not be appropriate to throw the petition on the ground of alternative remedy, that the petitioner should have resorted to the remedy under the Industrial Disputes Act.

5. Looking to the facts of this case in entirety that the petitioner was appointed in 1984 and has continued in service uptill now under the ad interim order of this court granted more than nine years ago on 4-12-86 and continued thereafter on 21-4-87 after the filing of the reply affidavit by the respondent, I do not consider it to be a fit case so as to render the petitioner out of employment at this stage and,

therefore, while directing that the petitioner may be continued in service with the same position as he has been continuing, it is directed that the petitioner shall be continued in service only till the regular appointments are held in accordance with the Rules whereat the petitioner shall also be allowed to compete irrespective of the crossing of the upper age limit in case the petitioner was within the age limit at the time of his initial appointment in the year 1984 as has been claimed by the petitioner. So far as the relief of declaring the petitioner to be a regular appointee is concerned, the same is hereby declined and for that purpose no direction can be issued to absorb him as a permanent employee in the cadre of Peon.

6. This petition is, therefore, partly allowed and the Rule is also made absolute in the terms as aforesaid. Since the main petition itself has been decided, the ad interim order dated 4-12-86, which was continued on 21-4-87, automatically comes to an end. No order as to costs.